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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DARRION LARRY ALEXANDER,

Plaintiff,

v.

EDWARD S. ALAMEIDA, JR., et al.,

Defendants.

Case No.: 2:03-cv-0288 RRB GGH

**ORDER GRANTING DEFENDANTS
MOTION UNDER RULE 50 OF THE
FEDERAL RULES OF CIVIL
PROCEDURE**

Jury trial commenced in this action on May 28, 2008, in front of the Honorable John A. Mendez. Deputy Attorney General Christopher Becker appeared on behalf of the Defendants. Plaintiff, Darrion Alexander, appeared *in pro per*. After the close of Plaintiff's case in chief, Defendants moved for judgment under Rule 50 of the Federal Rules of Civil Procedure. The Court has reviewed and considered Defendants' motion.

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1 In his case in chief, Plaintiff testified that from the dates of November 10, 2002,
2 through December 16, 2002, his toilet leaked a clear, odorless water near its base. Plaintiff
3 testified that he told Defendants about the leak on multiple occasions and that they delayed in
4 getting assistance in stopping the leak. Plaintiff further testified that he used a towel provided by
5 Defendant Eck to clean up any excess water. Plaintiff failed to offer any evidence that he
6 suffered any harm from November 10, 2002, through December 16, 2002 and simply speculated
7 that he could have, but did not, contract a disease or illness from water derived from the toilet.

8 In order to prove that the Defendants deprived Plaintiff of his Eighth Amendment
9 rights, the Plaintiff must prove the following elements by a preponderance of the evidence: (1)
10 The Plaintiff faced a substantial risk of serious harm; (2) the Defendants knew of that risk and
11 disregarded it; and (3) the acts of the Defendants caused harm to the plaintiff. Model Federal
12 Jury Instructions for the Ninth Circuit, § 9.25 (2007).

13 The Court finds that Plaintiff has failed to present evidence that a reasonable jury
14 would find legally sufficient to conclude that Plaintiff's Eighth Amendment rights were violated.
15 See *Hoptowit v. Spellman*, 753 F.2d 779, 784 (9th Cir.1985). Furthermore, Plaintiff did not set
16 forth any evidence establishing that he suffered any harm as a result of Defendants' purported
17 conduct.

18 Good cause appearing, the Court grants Defendants' motion under Rule 50 of the
19 Federal Rules of Civil Procedure.

20 **IT IS SO ORDERED.**

21 DATED: June 2, 2008

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24 /s/ John A. Mendez
25 JUDGE JOHN A. MENDEZ
26 UNITED STATES DISTRICT COURT

27 03cv288.o.62.wpd
28 SA2003104569

DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **Alexander, Darrion Larry v. Edward S. Alameida, Jr, et al.**

No.: **2:03-cv-0288 RRB GGH**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On June 2, 2008, I served the attached:

• **[PROPOSED] ORDER GRANTING DEFENDANTS MOTION UNDER RULE 50 OF THE FEDERAL RULES OF CIVIL PROCEDURE**

by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 1300 I Street, Suite 125, P.O. Box 944255, Sacramento, CA 94244-2550, addressed as follows:

Darrion Larry Alexander, P-05296
California Correctional Institution
P.O. Box 1906
Tehachapi, California 93581
In Pro Per

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on June 2, 2008, at Sacramento, California.

P. Tillery

/s/ P. Tillery

Declarant

Signature

03cv288.o.62.wpd